IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTWUN ECHOLS	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
ARTHUR PELULLO &	:	
BANNER PROMOTIONS, INC.	:	NO. 03-1758
	:	
Defendants	:	

Newcomer, S.J. June , 2003

O P I N I O N

Presently before the Court is the Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and the Parties' cross-motions for partial summary judgment. For the reasons set forth in the following, Defendants' Motion to Dismiss is denied, Plaintiff's Motion for Partial Summary Judgment is granted and Defendant's Cross-motion for Partial Summary Judgment is denied.

BACKGROUND

Plaintiff, Antwun Echols, is a thirty-one (31) year old professional boxer who is currently ranked by two of the three world-wide professional boxing sanctioning bodies as the top contender in the super-middleweight division. In November of

1999, Plaintiff entered into an exclusive promotional agreement ("agreement") with Defendants, Arthur Pelullo and Banner Promotions, Inc. Plaintiff now seeks injunctive relief declaring the agreement unenforceable. In addition, Plaintiff brings several other claims seeking reimbursement for funds to which he claims he is entitled under a "step-aside" agreement. Plaintiff alleges these funds were fraudulently withheld by Defendants.

The instant cross-motions for summary judgment concern the validity of the agreement. The parties differ on whether the agreement is sufficiently definite so as to be enforceable. At the core of this dispute are two clauses contained in the agreement. They read as follows:

> 6. Your purse for all bouts covered by this agreement shall be structured as follows (a) non television, not less than $ 7,500.00 (b) Univision, not less than $ 10,000.00 (c) Telemundo, not less than $ 10,000.00 (d) ESPN 2, Fox Sports or small pay-per-view, not less than $ 20,000.00 plus $ 10,000.00 training expenses. (e) HBO AFTER DARK as a challenger or in a non title bout, not less than $ 45,000.00 plus $ 10,000.00 training expenses. (f) HBO AFTER DARK as a World Champion not less than $ 80,000.00 plus $ 10,000.00 training expenses. (g) HBO as a challenger or in a non-title bout, not less than $ 50,000.00 plus $ 10,000.00 training expenses. (h) HBO as a World Champion, not less than $ 125,000.00 plus $ 15,000.00 training expenses.
>
> . . .
>
> 8. If during the course of this Agreement Boxer should lose any bout, Banner shall the [sic] right but not the obligation to rescind this Agreement or the purses set forth in paragraph (6) shall be subject to renegotiation.

Less than a month after entering this agreement, Plaintiff lost his first bout to Bernard Hopkins. The Defendants have indicated no desire to rescind the agreement. Nor have they made any effort to renegotiate the minimum purse bid amounts as provided in paragraph 6. Instead, in a February 24, 2003, letter to Plaintiff's agent, the Defendants have taken the position that the parties are to negotiate purse amounts on a bout-by-bout basis with no minimum purse amounts like those provided in paragraph 6. The Plaintiff argues that without minimum purse amounts the agreement is indefinite and, therefore, unenforceable. The agreement provides that it shall be governed and construed "under the laws of the state of Delaware."

On April 2, 2003, this Court denied Plaintiff's request for a temporary restraining order to enjoin Defendants from representing him in an upcoming World-title bout. On June 3, 2003, this Court granted Defendants' Motion to Dismiss Plaintiff's Muhammad Ali Boxing Reform Act (15 U.S.C. § 6301 et seq.) claim. In Defendants' instant Motion to Dismiss, the Defendants assert that because this Court dismissed Plaintiff's claim under the Muhammad Ali Act, this Court no longer has subject mater jurisdiction to consider Plaintiff's case.

DISCUSSION

I. Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction

In the wake of this Court's dismissal of Plaintiff's Muhammad Ali Act Claim, the Defendants attempt to land a knockout punch by arguing that the Court's dismissal of the Ali Act claim resulted in a loss of subject matter jurisdiction. Defendants' efforts amount to nothing more than a swing and a miss. While it is true that the Court's dismissal of Plaintiff's Muhammad Ali Act Claim destroyed federal question jurisdiction, it did nothing to compromise the presence of diversity jurisdiction. In addition, if necessary, this Court is able to maintain jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201.

A. Diversity Jurisdiction

Diversity jurisdiction requires complete diversity among the opponents and an amount in controversy in excess of $75,000. 28 U.S.C. § 1332. When considering suits involving claims for injunctive relief the amount of controversy is measured by the value of the right asserted by the plaintiff. Columbia Gas Transmission Corp. v. Turbeck, 62 F.3d 538, 539 (3d Cir. 1995). In the case at hand, the Plaintiff seeks to nullify

the parties' agreement. The agreement calls for at least three fights a year for which Plaintiff will be paid (pursuant to paragraph 6) no less than $30,000 per fight. Therefore, without even considering any other possible earning potential under the agreement, its value to Plaintiff is, at a minimum, $90,000 per year. With, at least two years remaining in the agreement,[1] the total value to Plaintiff is in excess of $180,000, an amount far greater than the $75,000 requirement.

While this analysis seems clear enough, the Court is mindful of the Defendants' contention that the purse amounts in paragraph 6 no longer apply and, therefore, the Defendants may argue that the foregoing analysis is inaccurate. Therefore, the Court will employ the following alternate method of analysis. By Defendants' own admission, Plaintiff was paid $170,000 under the agreement in 2000, $145,000 under the agreement in 2001 and $70,000 under the agreement in 2002.[2] Therefore, even after the Defendants stopped honoring the purse minimums in paragraph 6, on average, Plaintiff earned $128,334 per year. Under this analysis, the value of the agreement to Plaintiff is, at least,

[1] The agreement provides for an additional year to be added to its duration in the event the Plaintiff challenges for or wins a World Title.
[2] Plaintiff earned these amounts after his first loss under the agreement and, therefore, subsequent to the applicability of the renegotiation clause contained in Paragraph 8.

$256,668. There can be no split decision here, the amount in controversy requirement has clearly been met.

Plaintiff is a resident of Iowa. Defendant Pelullo is a Pennsylvania resident. Defendant Banner Promotions Inc. is a Delaware corporation with a principle place of business in Pennsylvania. The complete diversity requirement of 28 U.S.C. § 1332 has been met. Because the amount in controversy is more than $75,000 and because the diversity requirement has been met, this Court has diversity jurisdiction.

B. Declaratory Judgment Act

In addition to diversity jurisdiction, this Court has the power to exercise jurisdiction over Plaintiff's claims under the Declaratory Judgment Act, 28 U.S.C. § 2201. Exercise of this Court's power to assert jurisdiction under the Declaratory Judgment Act is appropriate here. However, because diversity jurisdiction is present this Court need not assert jurisdiction under the Act.

II. The Parties' Cross-claims for Partial Summary Judgment

A. Summary Judgment Standard

In order to succeed on a motion for summary judgment, a movant must show that the factual record is devoid of any genuine

issue as to material fact. Fed.R.Civ.P. 56(c). A genuine issue of material fact exists when the record would permit any reasonable fact finder to find in favor of the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In considering such a motion, a court must view the evidence in a light most favorable to the non-moving party. Dici v. Com. Of Pa., 91 F.3d 542, 547 (3d Cir. 1996). Because no genuine issue of material fact remains with regard to the parties' motions for partial summary judgment, this Court is able to grant summary judgment in this matter.

C. Discussion

When the Plaintiff lost his first bout while fighting under the terms of the agreement, the Defendants had the right to rescind the agreement, or, "the purses set forth in paragraph (6) shall be subject to renegotiation." The Defendants clearly chose not to rescind the agreement. This is evident based on the eight bouts the parties have entered into since Plaintiff's first loss. They also chose not to renegotiate the purse minimums in paragraph 6. Instead, in a February 24, 2003, letter to Plaintiff's agent, the Defendants took the position that each bout would be subject to negotiation without the benefit of purse minimums as set forth in paragraph 6. The language giving rise to this dilemma is undoubtedly ambiguous. It is unclear whether the agreement gives the Defendants the ability to leave the purse minimums at their current levels, an unlikely option for the Defendants, or, whether they must be renegotiated after Plaintiff's first loss. In addition, it is unclear whether the Defendants were required to notify the Plaintiff and renegotiate the minimums all at once or whether they were to be renegotiated on a bout-by-bout basis. Regardless, under any conceivable interpretation the same issue arises, that is, whether the agreement is sufficiently

definite so as to be enforceable.

It is this question that the Court must now address. "It is a fundamental precept of contract law that the terms of a contract must be reasonably certain in order to be enforceable." Middle States Drywall, Inc. v. DMS Properties-First, Inc., 1996 WL 453418, *7 (Del.Super. 1996). "The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy." Id. quoting Restatement (Second) of Contracts , § 33 (1981). "The general rule is that price is an essential ingredient of every contract for the transfer of property or rights therein or for the rendering of services." Raisler Sprinkler Co. v. Automatic Sprinkler Co. of America, 171 A. 214, 219 (Del.Super. 1934). The Defendants' decision not to honor the purse minimums but rather to "renegotiate" them removed any mention of price from the agreement. Therefore, the parties are left to renegotiate a purse without any basis for doing so. Subsequently, it becomes difficult for a court to determine whether a breach has taken place and impossible to conceive of an appropriate remedy in the event of such a breach. The parties' agreement is indefinite.

The essence of the parties' agreement after Plaintiff's loss became a contract to enter into a future contract. "[T]o be enforceable, a contract to enter into a future contract must specify all its material and essential terms, and leave none to be agreed upon as the result of future negotiations." RGC International Investors, LDC v. Greka Energy Corp., 2000 WL 1706728, *12 (Del.Ch. 2000), quoting Raisler Sprinkler Co. v. Automatic Sprinkler Co. of America, 171 A. 214, 219 (Del.Super. 1934). Clearly, the parties' agreement fails to adhere to this requirement. Moreover, an essential term to be incorporated into the final contract is lacking. Such an arrangement is not enforceable. Hazen v. Miller, 1991 WL 244240 (Del.Ch. 1991). As the Raisler Sprinkler Court indicated, "an agreement that [parties] will in the future make such contract as they may then agree upon amounts to nothing. So, to be enforceable, a contract to enter into a future contract must specify all its material and essential terms, and leave none to be agreed upon as the result of future negotiations." Raisler Sprinkler, 171 A. at 219.

The Defendants' contention that the agreement is sufficiently definite based on the requirement that the parties negotiate in good faith is unpersuasive. While such a requirement may offer a court an indication as to whether or not

a breach has taken place it does little to allow a court to formulate an appropriate remedy. In addition, such an argument overlooks the long standing requirement that price is an essential ingredient of every contract. Furthermore, Defendants' contention that the agreement is definite based on the parties' past performance is unconvincing and lacks supporting caselaw

AN APPROPRIATE ORDER WILL FOLLOW.

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Clarence C. Newcomer, S.J.

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ARTHUR PELULLO &	:	
BANNER PROMOTIONS, INC.	:	NO. 03-1758
	:	
Defendants	:	

O R D E R

AND NOW, this day of June, 2003, for the reasons set forth in the accompanying Opinion, it is hereby ORDERED that:

1. Defendants' Motion to Dismiss is DENIED;

2. Plaintiff's Motion for Partial Summary Judgment is GRANTED;

3. Defendants' Motion for Partial Summary Judgment is DENIED.

In accordance with the above, it is further ORDERED that judgment be entered in favor of the Plaintiff and against the Defendants on Count I of the Complaint.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.